

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1397 of 1998

in

SPECIAL CIVIL APPLICATION No 4679 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SURAT DISTRICT PANCHAYAT

Versus

DILIPSINH BHIMSINH RATHOD

Appearance:

MR HS MUNSHAW for Appellant

MR CB DASTOOR for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE C.K.BUCH

Date of decision: 24/07/1999

ORAL JUDGEMENT [PER : C.K. THAKKAR, J]

Admitted. Mr. CB Dastoor, learned counsel appears

and waives service for the respondent workman. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This Letters Patent Appeal is filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 4679 of 1998 on 9th November, 1998.

The appellant Surat District Panchayat, has approached this Court by filing the present appeal. The case of the appellant was that the respondent workman was appointed on temporary and ad hoc basis as Workcharge Clerk by passing several orders. Those orders specifically mentioned that the appointment was on purely temporary and ad hoc basis and that too for a particular period. It was also stated that the workman would not be entitled to continuation or other benefits as the appointment was for a fixed period. It appears that the final order of appointment was passed on 24th April, 1984 (Annex.C to the petition) and it was explicitly mentioned that the workman was appointed with effect from that date i.e. 24th April, 1984 on purely temporary basis for a period of one month only. It was further stated that as soon as said period of one month would be over, he would be relieved from services. It was the last appointment order and thereafter no further appointment was made. In other words, services of the workman came to an end with effect from completion of one month from 24th April, 1984 i.e. from 23/24th May, 1994.

The case of the workman was that his services were terminated. It appears that the workman initially approached Gujarat Civil Services Tribunal and thereafter District Panchayat, Surat. Finally, however, he went to the Labour Court in the year 1992 and a reference was made on 2nd September, 1992 as mentioned in the award in Reference (LCS) No.149 of 1992. Before the Labour Court, the present appellant did not appear. No reply was also filed on behalf of the appellant. The workman led evidence and the Presiding Officer of the Labour Court, Surat, by an award dated 6th October, 1997, granted reinstatement with full back wages. A direction was also issued to reinstate the workman within 30 days from the publication of the award.

Being aggrieved by the above award, the appellant approached this Court by filing the above petition. Before the learned Single Judge, an argument was advanced on behalf of the appellant that the workman was given an appointment for a fixed period from time to time and thus the case was covered by Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It was also urged that though the orders were produced before the Labour Court by the workman

himself, the Labour Court did not consider documentary evidence and appointment orders in their proper perspective and it has resulted in the failure of justice. Finally, it was submitted that a serious error of law was committed by the Labour Court in granting reinstatement with full back wages which could not have been done.

The learned Single Judge, considering the submissions of the learned counsel for the petitioner, observed that he did not find any illegality in the order of the Labour Court so far as reinstatement and other benefits were concerned. Regarding back wages, however, the learned Single Judge observed that the workman took about fourteen years in approaching proper forum and it was, therefore, appropriate to direct the District Panchayat to pay him back wages to the extent of 25% instead of 100%. Petition was accordingly partly allowed.

The said order is challenged by the appellant before us.

We have heard Mr. Munshaw, learned counsel for the appellant and Mr. Dastoor, learned counsel for the respondent workman.

Mr. Munshaw submitted that the case was directly covered by the provisions of Section 2(oo)(bb) of the Act and the action could not be said to be of termination and the award was illegal and contrary to law.

Alternatively, Mr. Munshaw urged that the Labour Court as well as the learned Single Judge ought to have considered the appointment orders which were on record and ought not to have granted reinstatement and continuity in service.

Finally, Mr. Munshaw contended that no back wages at all ought to have been awarded in view of the fact that the workman approached proper forum after more than a decade. According to the learned counsel, even if the Court was satisfied that it was a case of granting reinstatement, no benefits of back wages could have been awarded.

Mr. Dastoor, on the other hand, supported the award passed by the learned Single Judge. He submitted that when the discretion was exercised by the Labour Court, it could not be said that the award was illegal. In any case, when the learned Single Judge has refused back wages to the extent of 75% and granted only 25%, there is no error of law apparent on the face of record which requires to be corrected by the appellate Court. He, therefore, submitted that appeal deserves to be dismissed.

In the facts and circumstances of the case, in

our opinion, Letters Patent Appeal deserves to be partly allowed. So far as provisions of Section 2(oo)(bb) of the Act are concerned, we are afraid, they would not apply to the facts of the instant case. Last appointment order which is on record was dated 24th April, 1984 and according to the District Panchayat- appellant herein, by afflux of time, it came to an end on 23/24 May, 1984. Now the provisions of Section 2(oo)(bb) of the Act came to be inserted with effect from August, 1984. Thus, when the services of the workman came to an end, the provisions of Section 2(oo)(bb) of the Act did not come into force. That section, therefore, would not govern the case of the workman.

The only question was whether in the facts and on the circumstances of the case, could it be said that services of the workman were rightly terminated. Now to recall, the District Panchayat did not file any counter. No one appeared before the Labour Court on behalf of the appellant. The Labour Court, therefore, considered the case put forward by the workman and not controverted by the respondent Panchayat and in the light of the facts and circumstances including the appointment orders which were given effect from back dates, the Labour Court held that the services of the workman were wrongly terminated. It cannot be said that by passing an order of reinstatement, the Labour Court had committed any error of law.

Regarding continuity of service, obviously, once the order is held to be bad, the workman concerned would be entitled to continuity. So even that part of the order does not require interference.

Regarding back wages, however, there is some substance in the argument of the learned counsel for the appellant. It is clear that after services of the workman were terminated, he had approached Gujarat Civil Services Tribunal and thereafter approached District Panchayat. The said fact may be considered by appropriate Court/Tribunal in entertaining his grievance at belated stage and in deciding the matter on merits. But it is also equally important to bear said fact in mind when the Panchayat is directed to pay back wages during the intervening period. As is clear, reference was made in the year 1992 before the appropriate Court. In these circumstances, therefore, that would be a material date to be considered for payment of back wages. Learned Single Judge was of the view that the workman would be entitled to back wages to the extent of 25%. In our considered opinion, the workman would be entitled to 25% of back wages from the date of reference and not from the date of termination of services. However, there is one factor which cannot be ignored and it is that the award was made

by the competent Labour Court on 6th October, 1997. Hence, on 6th October, 1997, reference was accepted, award was passed and the appellant Panchayat was directed to reinstate the workman. Thereafter, there was no reason not to reinstate the workman. There was no stay against the award. In our opinion, therefore, with effect from that date, the workman should not be deprived of back wages and he would be entitled to full back wages.

For the foregoing reasons, Letters Patent Appeal is partly allowed. Order of reinstatement and continuity of service passed by the Labour Court as well as by the learned Single Judge is not disturbed. Regarding back wages, however, it is clarified that the respondent workman would be entitled to 25% back wages from the date of reference till 5th October, 1997. He will be entitled to full back wages from 6th October, 1997 onwards. Appeal is accordingly disposed of. No order as to costs.

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